

### **Amendments to the Drawings**

The attached sheet, which includes an English translation of Fig. 5, replaces the original sheet including Fig. 5 with text written in a foreign language.

Attachment: One (1) Replacement Sheet

**REMARKS/ARGUMENTS**

This Amendment is being resubmitted in response to the Office Action of February 26, 2009 which indicated that Applicant had not filed an Interview Summary for the interview conducted with Examiner Schneider on February 23, 2009. Applicant has submitted such Interview Summary along with this Amendment. Applicant is also filing an Extension of Time in order to file this Amendment within the statutory period from the Final Office Action date of November 21, 2008.

However, Applicant points out that the requirement that Applicant file a Statement of the substance of the interview within one month of the Office Action of February 26, 2009 is improper and is not supported by 37 CFR or 35 U.S.C. The Examiner's attention is respectfully directed to MPEP 713.004 and 37 CFR 1.133(b). A summary of the interview is required only where reconsideration is requested and the interview is directed to the merits of the application. Applicant's counsel made an inquiry as to whether or not there was a human translation of the prior art reference WO98/45594. The telephone inquiry is directed more towards procedural matters, and not to the merits of the rejection or request for reconsideration. As such, Applicants believe the requirement is improper and further that Applicant's extension of time for 2 months instead of 1 month is not necessary. Withdrawal of the requirement for submitting an interview summary is respectfully requested.

**Allowable Subject Matter**

Applicants note and appreciate the allowability of dependent claims 22 and 24. To expedite this case to allowance, Applicants have adopted the Examiner's suggestion by adding new independent claims 51 and 52, which rewrite claims 22 and 24 in independent form including the limitations of independent claim 15 and those of any intervening claims.

**Objections to the Drawings**

The drawings were objected to because Fig. 5 includes text written in a foreign language. With this Amendment, Applicants have deleted the original sheet containing Fig. 5 and submit herewith one replacement sheet containing an English translation of Fig. 5.

The drawings were also objected to because reference numeral “28” had been used to designate both a “ball (28)” and a “bore (28).” Applicants have amended the specification to replace all typographical errors of “bore (28)” with “ball (28)”.

The drawings were further objected to as not including reference numeral 34’ as mentioned in the specification, and for including reference numeral 33 not mentioned in the specification. Applicants have amended the specification to replace the typo 34’ with numeral 33.

### **Objections to the Specification**

The Amendment to the specification dated September 25, 2008, was not entered because it referred to the specification by paragraph numbers, which were included in the published application but not included in the originally filed specification. Accordingly, with reference to the page and line numbers of the originally filed specification, Applicants amend the specification to correct typos on page 6, lines 6 and 11, and informalities related to the objections to the drawings.

The amendments to the specification and drawings are believed to fully address the objections and, thus, reconsideration and withdrawal of same is requested.

### **Claim Rejections - 35 U.S.C. § 102(b)**

Claims 15-21, 23, 28-34 and 46-50 were rejected under 35 U.S.C. 102(b) as being anticipated by Kruger et al (WO98/45594). On February 24, 2009, the Applicants received the complete translation of Kruger and thank the Examiner for his assistance. Applicants will refer to Kruger in accordance with this translation.

Claim 15 recites, *inter alia*, “the spool member, in a third valve configuration, directs the flow of a fluid from the valve inlet to the valve outlet when a bias force imposed by the biasing member is sufficient to prevent the flap device from opening after pressure within the inlet flap outer conduit has reached an operating pressure”. No portion of Kruger discloses this claim limitation nor has the Examiner cited any portion of Kruger for disclosing the same. For at least this reason, Applicants respectfully submit that claim 15 recites novel and patentable subject matter and request withdrawal of the rejection.

Further, claims 17, 31, 32, 34 and 46-50 were each rejected for the mere reason that “the claims are clearly anticipated by Kruger et al”. However, no element in Kruger was cited nor was any explanation or rationale given as to why Kruger discloses the claimed invention. Applicants respectfully submit that the Examiner’s burden of establishing a *prima facie* case of anticipation has not been satisfied, and Applicants therefore request that the rejection be withdrawn.

Also, by this Amendment, independent claims 15 and 28 now recite, *inter alia*, “a biasing member having an end associated with the spool member” and “a flap device associated with another end of the biasing member opposite the spool member and axially spaced apart from the spool member”. None of the cited references, whether taken individually or in any permissible combination, disclose this arrangement of claim limitations. Applicants therefore request that the Examiner withdraw the rejection of claims 15 and 28.

In addition, claim 46 was amended to recite, *inter alia*, “a pressure valve axially spaced apart from the flow valve” and “a biasing member having an end associated with the flow valve and another end associated with the pressure valve”. None of the cited references disclose this arrangement of limitations. Accordingly, Applicants submit that claim 46 has been amended to overcome the rejection.

Finally, claims 16-23, 29-34 and 47-50 are ultimately dependent on a respective one of independent claims 15, 28 and 46, and under principles of claim dependency, define novel and patentable subject matter for at least the foregoing reasons and for the novel subject matter disclosed therein.

Accordingly, reconsideration and withdrawal of the rejection of claims 15-21, 23, 28-34 and 46-50 under 35 U.S.C. § 102 is respectfully requested.

### **Claim Rejections - 35 U.S.C. § 103**

Claims 25, 26, 43 and 45 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kruger in view of Good et al. (3,193,250). Claims 25 and 26 have been cancelled thereby rendering moot the rejection of the same. With this Amendment, Applicants have also added claims 53 and 54 to clarify the patentable subject matter originally intended for cancelled claims 25 and 26. First, claims 53 and 54 ultimately depend from independent claim 15 and are patentable at least for the reasons discussed above with respect to independent claim 15. Second,

none of the cited references, whether taken individually or in any permissible combination, disclose this invention of claims 53 and 54. Specifically, new claim 53 recites the flap device including “a part defining the flap inlet and a sleeve having one side adjacent to the part and another side associated with the biasing member, the part being axially adjustable relative to the inner bore such that a biasing force exerted by the biasing member on the sleeve may be adjusted”. Further, new claim 54 recites “axial adjustment of the part of the flap device does not affect the volumetric flow of fluid from the valve inlet to the valve outlet”. For at least these reasons, Applicants submit that claims 53 and 54 contain patentable subject matter.

Also, claim 43 has been amended to render moot the rejection of claim 43. By this Amendment, claim 43 now recites, *inter alia*, “a pressure valve axially spaced apart from the flow valve” and “a biasing member having one end carried by the flow valve and another end carried by the pressure valve”. Applicants submit that none of the cited references, whether taken individually or in any permissible combination, disclose this arrangement of limitations. Further, claim 45 is dependent on claim 43, and under principles of dependency, contains patentable subject matter at least in view of the foregoing reason.

Claims 35-42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kruger in view of Kelly et al. (U.S. Application. Serial No. 10/344,589). First, claims 35-38 and 39-42 ultimately depend from independent claims 15 and 28 and are patentable at least for the reasons discussed above with respect to independent claims 15 and 28. Second, claims 35 and 39 have been amended to recite, *inter alia*, “the first pressure is about 20 to 30 bar”. Support for this amendment is found in claims 17 and 18, Fig. 6 and page 7, lines 26-28 of the originally filed application. As stated in the Action, Kruger does not disclose the first pressure being 20 to 30 bar. Further, Kelly does not cure this deficiency because Kelly fails to disclose the biasing member, in the first valve configuration, permitting the flap device to open when pressure within the inlet flap outer conduit reaches a first pressure of about 20 to 30 bar. Finally, claims 25 and 39, as amended, further recite “the force exerting portion is an electromagnet that receives 0 amps when the biasing member is in the first valve configuration”. In this respect, the biasing member is pretensioned against the flap device even when the electromagnet is not activated, so that the flap device opens when the first pressure reaches 20 to 30 bar. To the contrary, Kruger (p.14, lines 2-4) discloses the closing pin 51 is not pretensioned against the ball 60 so that the pressure relief hole 48 is open in the neutral position when the electromagnet is not activated.

Therefore, Kruger teaches away from the claimed invention, and for at least this additional reason, Applicants request the Examiner to withdraw the rejection of claims 25 and 39.

With this Amendment, Applicants have added claim 55 which recites “the spool member has a peripheral recess communicated between the valve inlet and the valve outlet when the spool member is in the third valve configuration, and a portion of fluid leaks from the valve inlet to the valve outlet when the peripheral recess is spaced apart from the valve inlet or the valve outlet”. This subject matter is supported by page 6, lines 28-32 and page 8, lines 11-15 of the originally filed specification. On the other hand, Kruger (p. 14, lines 15-18) discloses that fluid begins to flow from a feed hole 35 to an outlet hole 36 “as soon as the control edge 56 of the annulus 54 of the control slide 53 reaches the second hole 57”. In this respect, the control slide 53 does not leak any portion of fluid when the annulus is spaced apart from the second hole 57. For this reason, Kruger cannot be relied on for disclosing the invention of claim 55. In addition, claim 55 depends from independent claim 28 and under principles of dependency, is therefore allowable for the same reasons provided in support of claim 28.

Applicants also added claim 56 which depends from claim 55 and recites “the portion of fluid leaking from the valve inlet to the valve outlet is less than the gasoline discharge rate required for having an engine idle”. No permissible combination of the references discloses this claimed arrangement. Further, claim 56 depends from claim 55 and ultimately depends from independent claim 28, and therefore under principles of dependency contains patentable subject matter in view of the foregoing reasons.

Applicants’ counsel hereby authorizes the Examiner to charge Applicants’ Deposit Account No. 50-0852 the fee for any fees due to file this Request for Continued Examination and Amendment.

**Conclusion**

In view of the above amendments and remarks, Applicants respectfully request reconsideration and allowance of the claims now in the case.

Respectfully submitted,

By   
CARY W. BROOKS  
Registration No. 33,361

Reising Ethington PC  
P.O. Box 4390  
Troy, Michigan 48099-4390  
Telephone: 248-689-3500  
Facsimile: 248-689-4071  
Email: [brooks@reising.com](mailto:brooks@reising.com)  
Dated: April 6, 2009  
CWB/VCI